776 /268 cont./
794 subscription for the protection of a foreign personage; and this
[571] personage is not always a compatriot or a neighbor, for no one is
[634] a prophet in his country. But for the moment let us reserve this aspect, geographical in a way, in order to study in a little detail the manner in which the institution presents itself within definite cantons.

792 During the dangerous periods of the siba, a classic function
728 of the holiness, or of his beneficiaries, was to play the role of
175 patron, guarantor, or conciliator in disputes between groups. This is what an author from the Sous has named "the extinction of the fires of public disturbances," it'fâ' nîrân ath-thâ'irât bayna'n-nâs (2).

2. Manâqib al-H'ud'aykî, t. II, p. 52,
1. 11.

Thus an act of 1079 Heg.: 1668 shows the marabouts descending from Sidi ᶜAyâd of T'amast (Ud Berreh'il, in the valley of the Sous) at work. The Idaw Geryun and the Iqorrân, former occupants, were in conflict. The latter had to retreat to Idaw Mçat't'og. One day, it was the octave of the Aid, they had assembled on the az'allo for the collective prayer when the I. Geryun, disguised as women, attacked them. Whence a series of /269/ inexpiable vendettas. Then the marabouts intervened. They fixed a limit by the implantation of the "crook of God," takurayt n-rbbi (cf. ar. /Arabic/ ᶜukkâz in the same sense).
[784] They matched this operation with terrible imprecations against anyone who violated the truce: God would pursue the guilty one and his descendants to complete extinction, h'atta yanqarid'û min
[681] ad-dunyâ. On a more temporal plane, the infraction would be penalized by a fine of 1,000 ounces, to be paid to the descendants of the saint.

776 A number of other documents retrace less colorfully analogous
792 operations. It is very often Sidi Mh and who is on the scene, and
728 that is in conformity with his passe-partout personality. His descendants, along with those of the saint of Assttif, regularly stand

/269 cont./

796 792 728 security for the civic life of the Idma: elections, warlike or peaceful proceedings, etc. Sometimes, and this is an interesting case, the intervention presents a more precise character, that of legislation. I find a detailed example of this only in the Haut /Upper/ Dwiran, truthfully speaking contiguous to our domain. According to an act of 1052 Heg.: 1642, Sidi ᶜAbd al-Karîm al-Masnâwî (1)

1. Is this nasab to be compared to the one that certain members of the Zaouia of Dilâ' bore precisely during this period? The coincidence would be disturbing.

codified the relations between the a. Rrays and the a. Mezgur. [681] [628] This is a penal tariffication of the ordinary type, but offering the originality of resulting from an agreement between villages, under a saint's ministry.

793 796 The role of these personages in the assembly of rather vast groups by an operation which is properly a foundation has not, truthfully speaking, given rise among the Seksawa, whose monarchic unification undoubtedly goes back at least to the thirteenth century, to legends as typical as, for example, that of Sidi Brahim of Tighanimin in the I. T'anan (2).

2. Very rich legend of a founding saint, recorded by De Leyris, "Le mariage en Idaw T'anan /Marriage in Idaw T'anan/," in. /unpublished/ CHEAM, 1950. This theme of the foundation is current in North Africa. The most celebrated case is that of Moulay Idris. But it is not the clearest, owing to a powerful urban etiology. Analysis will be simpler in the case of synoecisms of bourgs or of rural groups. Cf., for example, C. Trumelet, L'Algérie légendaire, 1892, pp. 118, 121, 180, 181, 184, etc., and Les saints

/324 cont./

693 692 The existence of this latter is /325/ intermittent. It appears most often as linked to the progress of personal power and naturally also to the nearness of the towns. He is supported, but also imposed and oriented by the chief. Nevertheless, he always judges "by mutual accord," s-tarad'i, and his intervention is challengeable, like that of any other arbiter. But is it indeed a matter of an arbiter? Some old documents will permit analyzing the institution better.

175 634 69 /The following four paragraphs are in small type in the original source./ There is first an act of 923 Heg.: 1518, of the a. A'adduyws, recording a verdict rendered in a landed-property case, and which gives to one of the parties the ownership of parcels seized as counterpart of the expenses of mortuary services. And this in a great meeting of Seksawa and Idaw i-yzimmer. The h'ŝkim bases his authority upon the mutual and written appeal of the two adversaries to his court, called court of the char^{c} /Sharia/, "of the law": ba^{c}da rid'ŝ'i-him bi-majlisi'ch-char^{c}i laday-nâ bi-rasmi't-tarâd'î.

Another act of 1109 Heg.: 1698, of the I. Geryun, in very bad Arabic, relates a complete procedure. The moqaddem and [794] the jemâa place the case of two parties before a fqih designated by lot, ba^{c}da d'arabat la-hum al-qur^{c}a, "so that he may strike them with the sword of the law." It is a matter of a habous [681] /wakf/ lawsuit. The two litigants promise, in case of nonappearance, to pay into the hands of the moqaddem three mithqâl-s in penalty. Initial citation and appearance in court, designation of a judge, referral, fine in the event of nonappearance: all the moments of the first part of the procedure are brought to light here.

175 69 Again a tarâd'î consignation dated from 1122 Heg.: 1710, and coming from two personages from Alus, who solemnly empower a "cadi" of the a. Tikssit to act for them in making a settlement. "They are in agreement (to place) the char^{c}a of God in the hands of the fqih such and such ... for all that has become clouded between them in the case of land, trees, houses,

/369 cont./

Pecuniary Composition and Penal Law

613 619 634 121 Is the group resolved in the ensemble of the ikhs-s? Traits of discordance in the modern evolution of these two notions lead one to pose this difficult problem. And the evolution, which is above all expressed in an unequal reaction to the Arabic writing, has doubtlessly only accentuated more ancient discordances about which one is reduced to hypotheses. Very certainly, however, the Chleuh /Shluh/ taqbilt is adult before these influences exert themselves. What are the relations between the group and its agnatic 681 subdivisions here? Especially in the matter of repressive law, what is the part of the private pecuniary compensation: and of the /370/ sanction of public order? All that we can say, if we wish to avoid appealing to a suspect scheme of evolution: retaliation, then compensation, then fine, -- is that at the period to which the first written sources go back there are both decreed punishment and tariffed composition.

613 178 But another verification can put us on the track. The ancient state did not disclose any elements of the problem other than those of today. The debate already dealt with the interaction of the commune on the one hand, persons on the other. An acquisitive individualism, the constant rupture of the "patriarchal" society into irascible co-operators, indeed into foyers hiving off or into economic rivals, undoubtedly tempers from this time the gentilitial primacy. From the contentious plane they suppress it in the penumbra of old solidarities, tenacious undoubtedly, but which no longer crop out in disputes. Moreover, the phases of personal power, of which the twentieth century offered a perfectly observable cycle, certainly had to be adjusted, and not without collisions and uneasiness, to the former structure. If it is noteworthy that 592 the distribution of the habitat by villages, lmud'â, does not cor- [621] respond to anything in the communal institution, and that the unit [634] is always the taqbilt, without prejudice to the sometimes quite [613] mixed distribution of the ikhs-s into villages, it may be noted in an inverse sense that no authority of ancestors comes to restrict the citizenship of the head of foyer. It is indeed the "foyer," takat

/370 cont./

613 182 114 121 695

/footnote 1 continued/ familial groups within the political society. The fact is that the oath often has this aspect. And that is so true that, the group growing larger into the taqbilt, for example, it would be other tariffs that then function in the cojuratio. But one is also struck by the traits of decline or retreat of a familial law thus profiled, or, what amounts to the same thing, by its unequal resistance to the legalistic Mussulman influences, from which, in short, the public law in the strict sense of the term has much better extricated itself. Of the two, it is the latter that has had the major influence, to the point, undoubtedly, of reacting upon the other.

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/371/ But on this same plane there are two recoils, unless they are original lacunae. First of all, let us repeat, this society with ancestors has never reflected in its hagiology what is reflected in other systems similarly organized. Another negative remark: in this penal law, so well attested to during the four centuries that one can study it, sanction is always of public order, without the notion of private vengeance or of responsibility of the ikhs ever cropping out in it. This is important. One of the best studies of Berbère /Berber/ law, that of Hanoteau and Letourneux, has given much space to completely contrary aspects. A sharp difference with the western Haut Atlas stands out from what these authors say proceeds from a law of the family as opposed to that of the village: all these juridico-sentimental motive forces that the reqba, the ʿanâya are, all this code of virile honor that occupies such an important place among the Kabyles (1).

627 681 [114] [171]

1. M. Daumas and M. Fabar, La grande Kabylie /Great Kabylia/, 1847, already contrast the vendetta to the dîâ, as signs of two radically different systems, p. 35. These

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/footnote 1 continued/ observations and those of C. Devaux, Les Kebaïles du Djerdjera /The Kabyles of the Djurdjura/, 1859, have certainly inspired Hanoteau and Letourneux, La Kabylie et les coutumes kabyles /Kabylia and Kabyle customs/, 1873, t. III, pp. 77 sq.

The dîâ is not Kabyle. Now the milieu that we are studying is dominated by the pecuniary compensation, which comparativism has regarded for a long time as of a stage and character contrasting with those of a purely familial law. But what is there that is historical in these distinctions, and should we give them a value other than a didactic one?

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Certainly, the question of concrete relations that, in such-and-such a society, could be manifested between retaliation, compensation, composition fixed in advance, vengeance, punishment, and judgment is obscure. Perhaps in analogous milieus there were fundamentally opposed attitudes and options. In order to make a comparison with an ancient law, a comparison that has sometimes inspired adventurous theories, let us recall, but only as a landmark, that the old Germanic law /372/ simultaneously knew composition, an attenuated phase of familial vengeance, compatible moreover with an arbitral or judiciary organization, and proscription, which is of ritual character.

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In old Seksawa law the fine, which is a trait of highly "advanced" public law, and tariffed composition are known simultaneously. But as far as one can go back through the written sources, nothing but that is known; never retaliation. The contrary opinion has nevertheless been supported, but, it seems, without serious sources. We do not have the right to infer from pre-Islamic or Biblical Arab comparisons the existence of a stage in which personal vengeance could have legally been exercised here. One can, certainly, ask whether proscription after the crime is not also indeed a ritual evasion, favored by the institution of places of asylum, such as Z'init', and in the course of which intercessions, either familial or religious (intervention

/372 cont./

627 of the "marabouts"), are solicited. The term of azwag signifies
• 681 both the "banished" and the "suppliant," double aspect, passive and active, of the notion.

682 /The following paragraph is in small type in the original source./ Some twenty years ago one of our officers wrote: "Today, when a murder has been committed, the tribe orders some of its members to go to burn the gutters and other pieces of wood that project from the dwelling of the murderer. This act signifies to the guilty one that he must immediately leave the territory of the tribe. It is later announced: "There is no God but Allah, and Moh'ammed is his Prophet. Hear, O people of the tribe, so-and-so must leave as azwag, and if he is seen among us he must not be pardoned." "In Seksawa, pecuniary reparation is accomplished during the time of exile, whereas elsewhere it is paid on the day of return. This day the murderer, accompanied by the jemâa, presents himself to the parents of the victim, must be the first to greet them deferentially and turn out of their way, while lowering his head."

This notation undoubtedly is in large part the interpretations of an informant. But even as such, how instructive it is that the "supplication" aspect and magical procedures of exclusion come to complicate an operation of public law! We shall not resolve this disparity; it is not the only one that the milieu manifests.

However that may be, the dîâ then paid to the parents was 100 reals and a bovine. In addition, the jemâa collected the provisions for a meal: one sheep, semolina, salted butter, sugar. Let us recognize, moreover, that the old acts almost never anticipated a case of murder, doubtlessly out of fear of bad augury. They were satisfied to decree the punishment incurred by the gesture, that /373/ is, by the intention: two degrees, as will be seen, depending on whether the weapon was brandished or utilized. This is a relatively refined technique. What has left traces, outside of codifications, a veritable literary genre and so abundant that it is surprising that a theory of retaliation has been able to exist in the modern exegesis, are veritable legal papers.

/373 cont./

682 And they express a climate completely different from private vengeance. And here are some examples:

175 683 /The following seven paragraphs are in small type in the original source./ Ammern, 1232 Heg.: 1817. A specialist in the examination of wounds (we would say that he evaluates "incapacities") sets the idemnity, leqṣaṣ, corresponding to the loss of an eye. It is a sum of money, it is not the eye of the guilty one!

Ammern, 1167 Heg.: 1754. A father, afflicted by a prodigal and quarrelsome son, settles 80 o. for his account and henceforth disengages himself, min jamᶜ umur as-sufahâ' wa jamᶜ il-achrâr, if henceforth the young man should occasion: youthful follies, wounds and bruises inflicted upon others, and for which the old man indemnifies a series of victims for the past, by contract in a way.

175 681 Ammern, 1166 Heg.: 1753. A divorced woman has been sentenced to a heavy fine, 30 o. A third party pays it for her, not without acquiring, it seems, certain rights over the guilty one. In any case, from then on, he relieves her of all responsibility, "as the jackal is relieved of that for the blood of Joseph," picturesque Biblical reminder.

175 683 Tasa, 1242 Heg.: 1827. An expert evaluates the wound, the result of an "act of destiny" inflicted by Lh'sen Ubaha (a euphemism to designate the guilty one), "concerning the head of the old Sâid Wakrim." Valuation.

Fatwa of the son of sidi Lh'sen u Tiqqi (1147 Heg.: 1735). The rate applicable to a facial wound is evaluated at 1/12 of the dîf, in other words 72 mithqâl-s; in coin, ᶜabbâsîya. This by reference to Khalîl!

175 682 [623] [628] An agreement of 1274 Heg.: 1858 between the jemâa-s of the villages of Tamt'ddit, Tagunit, Tinwalin, Tamezgurt (the Imt'ddan tetrapolis). The piece is written by the hand of the marabout of Assttif, sidi Abdallah b. Ah'med. It is agreed that the dîf for voluntary or involuntary homicide is 100 mithqâl-s.

175 /373 cont./
685 "Note," taqyîd, of the fine imposed by the moqaddem of the
683 Idma on an individual who stole some almonds, and whose
[634] brothers cursed the one robbed, yal^{c}anû bi-kathrat il-qabîh': 10 m. for the thief and for each insulter. Without date.

175 Therefore, to be content with what can be restored by the
671 existing documentary sources, and even taking into account transpositions inherent in the writing, one is struck by the publicist and regulatory character of this penal law. To what extent this character has prevailed over familial autonomy will be shown by the following texts.

175 /374/ /The following three paragraphs are in small type in
685 the original source./ In 1267 Heg.: 1851 the Idaw Geryun
[619] decreed that an insolvent thief must be executed by his agnates.
[634] The latter must put him to death. If they do not resolve to do this, they must release him from his fine at their own expense. The jemâa frees the agents of this execution from any payment of dîâ!

In 1276 Heg.: 1860 the a. Tasa condemned one among them to death for robbery. He was therefore executed. "But not at all by the hand of one alone, but by that of all, and without dîâ, fine or exile, being incumbent on anyone."

There still exist in Haut Seksawa old men who remember
[613] deaths of this sort. The executioner is sometimes the agnatic group,
[634] sometimes the taqbilt, or rather a subdivision of the latter, the
[619] "third," thelth.

671 In these cases at hand, the primacy of the group and of the
681 justice that it renders is curiously reconciled with an archaic concern for immunity. Penalty of public order, certainly, but one that takes precautions on the side of private vengeance and the pernicious influences of spilled blood. The ikhs, or the "close ones," here become ministers of a repression that is indeed that
[613] of the state. And not only must they thus kill one of theirs, whom their "duty" would have been to protect or avenge, but it is the state that finally absolves them of the responsibility for this murder.

/376 cont./

634 554 repairs of the séquias, periodic cleanings of the basins, hospitality offered to the traveler. An act from the a. H'adduyws of 1166 Heg.: 1755 gives some savory details on that. One finds there a phrase member characteristic of this public order, whose prevalence over private legitimacy was pointed out above: "Whoever issues a plausible revendication (upon a piece of land), but resists (the tillage of the adversary) without consultation with the moqaddem": so much fine, man idda^{o}a bichibha wa ta^{c}arrad'a illâ bi-muchawarat il-muqaddam. This petty magistrate is thus the guardian of the order of the group here under its agrarian, economic, municipal but also judiciary aspect. His role is important. Also numerous documents specify on his behalf sanctions of fines imposed automatically upon anyone who does not obey him. One sees where such an evolution can go. In the late stage that our first officers were able to observe, such a tendency is fully affirmed.

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For example, here is a document of the Idaw Geryun of 1292 Heg.: 1875. In proper terms the moqaddem is defined as "having to administer the declarants according to equity, issuing his opinion in all their affairs." This avowed evolution towards personal power is accompanied by new penal arrangements for the repression of falsehood or impiety. A beginning of moralization of the power is glimpsed here. It is a reaction against the old order when the chief anticipates drawing upon a force that is not merely weapons. The attempt is instructive. To speak truthfully, such tendencies arouse opposition, permanent control of the ait Arbâin, rule of unanimity that the moqaddem can uphold only as long as he does not set himself up through violence, and which thus forces him into an incessant demagogy. This consultation with the jemâa is even sometimes expressly imposed upon him. It is thus that the Idaw Geryun in 1218 Heg.: 1803 specify that "the moqaddem or his assistants can do nothing without consultation with the jemâa, illa bi-muchâwarat il-jamâ^{c}a".

It cannot be said that evolution toward personal power, whose contemporaneous phase we have recorded and consolidated, has dried up this aptitude for codification. Perhaps it consequently worked in

634 /376 cont./
554 a void, or out of a sort of revenge against the event — so consid-
erable is the role of the fiction in these societies. The fact is
634 that this genre of writings is manifested up to our arrival. Who
671 knows whether the multiplicity of clauses was not sought after as
a guarantee against an invading arbitrariness? Certainly, the
guarantee is /377/ more or less efficacious. Not only can tyran-
nical power henceforth infringe upon these deliberations, but there
is something even more serious. The new magistery is based on a
new political morality. The automatism that the commune
looked for in the application of punishment gives way to a discre-
tionary valuation, which it would be false to say is constantly
iniquitous. It would not be maintained in such a milieu without
the support of legitimacy. But another legitimacy. Codification
henceforth collides against the nuances and contingency of a
praetorian jurisdiction, which undoubtedly does not fail to invoke
religion, reason, and good sense against its rival. The transition is ac-
companied, among many justiciables, by a feeling of liberation
with respect to old constraints of the group, of immediate and
pitiless effect. A new faculty of instance, of remise for cause, of
individual proceedings and recourse opens where hitherto only the
strict communal mechanism tried to govern. Such authentic in-
stincts of the milieu doubtlessly obtain satisfaction. In one sense
the amghar carries with him a faculty of deliverance: it is the
very one of anarchical destruction, but also, in a sense, that of
enlightenment and individualism. One is poorly equipped to de-
scribe with precision the play of factors whose alternating victories
have undoubtedly filled several centuries, and not only the nine-
teenth. It will suffice here to have extricated the character of it.

175 In 1132 Heg.: 1720 a fqih originally from the Arghen, the
634 tribe of Ibn Toumert, rises to interesting distinctions, which show
554 to what work of the intellect, and critical intellect, the institu-
[212] tion could give rise. "Among these rural people," he says, "the
[794] jemâ^{c}a and the moqaddem play the role of sultan in regulatory
affairs (aḥ'kâm). The moqaddem is the imâm. If they agree to
• [681] compose (sâmah'a) or levy a fine (inçâf), they divide the fine,
and the portion of the one and the other is evident. If they

/377 cont./
compose, there is no longer any recourse against it. If they do not come to an agreement, their imâm shall have the power to increase or diminish (the rate of the composition)." The act coupled to this consultation, and which is contemporaneous, mentions the division of an inçâf between the anflus (sic) of Tinwalin and Tamt'ddit and their jemâa-s.

In fact, this penal law is matched by a fiscal organization, which sustains it. According to a principle that has not yet been entirely abandoned in modern finance, the magistrate, and more frequently the "verbalisateur" /verbalizer, one who draws up an official report/, as we would say, benefits from the fine imposed, or seizes the object of the offense. Such is also, as has been seen, the retribution of the guardians of agricultural ban or imchchurd'a, whose name, formed from the Arabic root expressing the convention with /378/ clauses, clearly marks its character. But there is a great difference between this conduct and that of the moqaddem. The collectivity imposes interdiction on such-and-such a pasturage or such-and-such an orchard. Transgression authorizes, on the part of the communal agent, immediate capture: automatic application of a "prelaw," that being mixed with elements of noxal surrender. Such is the amchchard'o, the ancestor of the gamekeeper and village policeman. Much more complex is the role of the moqaddem. If in certain cases he too seems to reward himself from the flagrante delicto or "good take," most often he collects and keeps accounts of regulatory payments, only a portion of which comes back to him. Periodically he must give an accounting. Here is a typical document on this subject. It is, let us say, the end-of-year report of a manager of communal funds. Although drawn up in inadequate form, it can be summed up in columns of figures (1).

1. Abbreviations: m, mithqâl; o, uqiyya; mu, mûzûna; uj, wajh; f, fals. These are nominal moneys.

175 /381 cont./
683 considerations upon the tariff for facial wounds, evaluated at
671 1/20 of the dîâ, that is, 72 Abbassian mithqâls-s. An opinion
779 by a fqih from Arghen already mentioned (act of Tinwalin of
175 1198 Heg.: 1784) is based conjointly on the Tuh'fa and on
681 "what rules in the matter of ᶜorf and of ᶜâda in the country of
671 Sous, from Fès /Fez/ to the Sous, in the matter /382/ of fines
779 and of inçâf: and this is licit for these countrymen."

671 This pedantic contamination between the statute and the native law is not alone in revealing the true nature of these codifications. From what one is going to see now, even though it is only a matter of indications or traces, will doubtless stand out traits probably more authentic. The preamble of all these texts has already been noted. It is an agreement recording the unanimity of a group on its maçâlih', on its property. One knows indeed what use Malékite /Maliki/ empiricism can make
671 of this latter notion. But enough allowance has been made for
779 the religious impregnations of the system for one also to seek to disclose there another inspiration, that of a collective pragmatism, making sure of its legitimacy by the pursuit of its material
671 and moral interests. This legitimacy manifests itself by social
634 contract. This is not an accident. The contractual aspect is in
675 fact quite striking in these testimonies. This is a mutual commitment among them on the one hand, with the promoted moqaddem on the other, to which the ikhs chiefs subscribe. It obligates them as it obligates the moqaddem, and if the latter, curiously enough, does not figure in the act it is because the consensus of the patres is deemed to entail his conditioned adherence on the basic points stipulated by the document. A contract thus becomes the law of the group.

The clauses most often constitute a veritable tariffed charter. It is rare to read, as in this document of 961 Heg.: 1583 (Idaw Geryun), that the moqaddem and his assistants "will take" what they please. Such a tone is isolated. In the totality of the cases
[126] it is a matter of a minute tariffication. A large number of these documents has been collected by us in the high valley.

/388 cont./

671 of the person: shares of benefice of a saint, tisura (trans. of the
675 Arabic futûh'ât), of the right to mutual assistance, tiwizi, of
421 "protection," etc. There one /389/ is at the very antipode of
182 what one imagines of an "ancient" law.

What is to be said about this division of labor that not only
671 qualifies, in the landed-property procedure, judges outside the
182 group, but jealously denies competence to the temporal chief?
[692] These careful delimitations, although undoubtedly from the most authentic foundation of the Chleuh /Shluh/ society, appear irreducible to archaism. Nevertheless the splitting of the judiciary instance obeys exigencies of recourse to the outside, of pause in the course of the joust, and, in short, of rejection of responsibility by the group, which express obscure traditional sentiments. This gives rise nonetheless to a procedure of scholarly type, written and aspiring to cityness. Traits undeniably "advanced": condemnation by default that the codifications anticipate, fine for nonexecution of the sentence or for failure to answer a summons, this last motif recurring constantly.

681 The penal law, up to a very recent period, has been admin-
182 istered by the jemâa. The latter has never really given it up. It
[634] is even for this purpose that it deploys the most initiatives and most willingly exercises its legislative function. But let us note that this penal law, based on pecuniary composition, a composition duly tariffed, evinces a singular institutional maturity. While the gentilitial structure inspires the agrarian order, it is effaced, in the penal one, before something that is clearly of the public law, and felt as such.

695 The plural oath has retained its role. It concludes all litiga-
182 tions that the writing does not determine. But this restriction is
[691] already quite important. And moreover, even where it keeps all its value, the oath has been driven into a reduced position: no longer of sworn law -- but of a second element of a procedure begun on an intellectual and profane plane. The richness of the elements of magico-religious order that one finds here and there in this part of the system cannot efface the contrary aspects, which are also striking. Certainly it is possible to suppose that

/219 cont./

623 and intervenes to regulate the use and repair of the séguias; fi-
185 nally, it often designates minor functionaries remunerated by the
241 /220/ community for the systematic regulation of irrigation:
245 these are the ones that are called by the name of "amazzal," or
624 again the "little inflas," or the "inflas of the water."

623 Sometimes it is the council of the "taqbilt" itself that inter-
627 venes in order to apply to those who act contrary to the crop
681 police the fines called "azzain n igran," fines of the fields. But
625 most often each "jema^{c}t" of a "mouda^{c}" fixes these penalties as it likes and collects the fines for its profit without swerving from a traditional tariff known to all. Moreover, it is in this form of
671 the "azzain n igran" that the customary law at the heart of the
179 "mouda^{c}" persists longest, even when the progress of the penetra-
632 tion of the Makhzen /makhzan/ has led to its disappearance in the country.

623 Thus, for reasons that are related to the conditions of mate-
184 rial life, the assembly of the "mouda^{c}" often assumes great local importance. Even in regions like that of the Haha, where the population is dispersed over the whole territory in isolated houses, the use of forest pastures, the execution of tasks in common by mutual assistance contribute toward maintaining the tradition of
623 the "jema^{c}t" councils. Meetings are held when necessary in the
346 Friday mosque, which is sequestered, like all the houses in this
361 country, on a solitary hill (1).

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1. It may happen that the organization of the "mouda^{c}" develops on the model of that of the "taqbilt" and that it is then directed by a moqaddem. This is the case in several small tribes of the Seksawa (the Ait Haddiyous in particular). This event occurs in a region where the "taqbilt," divided into three thirds, are stronger than elsewhere; one grasps here from life one of the phases of the appearance of new autonomous fractions being formed by simple growth of the "mouda^{c}." One also sees from

554 /224 cont./
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[692]

/footnote 2 continued/ sullied by partiality than that of the inflas, whose rapacity is feared.

[585] [586] [428] Marriages and divorces are concluded in his presence. He conducts the proceedings for the apportionment of inheritances and then appropriates a small part of the estates. He punishes according to the ʿorf -- the custom -- crimes and offenses, and [681] imposes the fines that are proper for each mistake. The money thus collected is divided into three parts: the first goes to the moqaddem; the second is for the taqbilt, which the inflas consider that they represent completely in this circumstance; the last part constitutes a small reserve fund for the expenses of hospitality.

The moqaddem's authority varies according to his wealth [292] and personal situation. If he is already, because of the power [613] of his "ikhs," an important notable, he is seen, clothed in garb [571] /225/ of white wool, which manifests his high rank, to deliberate, to fix the round of hospitality, to accept the "ʿar" [754] /protector relationship based on a conditional curse/ of foreigners [574] who ask for protection, and to have given to one who offers him [431] a sacrifice some grain and walnuts by contribution of the whole [628] canton. He concludes alliances with neighboring cantons and presides at the "tinoubga," festivals given on the occasion of [574] visits by foreign warriors. If the moqaddem, on the contrary, is a man without influence, he effaces himself before the "inflas" or the "ʿawan," who compete to have all the disputes settled to the advantage of their family. When the year has passed, the [666] moqaddem brings the inflas together and calls for his replacement. As an exception his post is renewed for a year, "if his magistrature has been happy," but never longer.

[198] As a result of the general tendency toward the development of personal power, people in the Haut-Atlas /High Atlas/ in our day somewhat scorn the effaced moqaddems who abide by the ancient tradition, according to which they would be only the agents of their brothers. One who does not know how to speak

*634 554 /225 cont./ firmly and "does not shut the door" weakens the tribe; he is not capable, it is said, of making the necessary decisions in order to ensure for the canton, amidst the perils that threaten it, a free and independent life.

*634 673 [681] When the moqaddem assumes his duties, he often decrees a list of infractions that will be repressed through his attentions, according to a scale that he has established in agreement with his advisers. An act is drawn up, the authenticity of which is certified by the notables. An examination of these acts sometimes allows us to divine the struggles that break out within these small states. In the Haut-Atlas, one often sees appear, in place of the [613] names of the 12 or 15 heads of the "ikhs" who represent the canton, on the sheet written by the taleb, that of three or four powerful personages, friends of the moqaddem, who take it upon themselves to accept in the name of the whole group the regulations decreed by the new leader. There is thus formed a kind of little senate that diminishes the political importance of the canton council.

*634 184 Among the Aït Waouzgit of the Sirwa, the internal government of the "taqbilt" takes a form through which the influence of the richest notables is indicated even better. There, the members of the council -- the "Aït ed diwan," are only four in number. The assembly of the "Aït Arbaʿin" nevertheless exists; it is made up of young men designated for a year at the rate of one per family, who come in /226/ turn to make sure of the watch in the collective fortress, receive their part of the fines collected, eat the meals offered by the guilty ones to the tribe. When they have nothing better to do, they go to look for wood for the mosque and heat the water for ablutions. And so, in derision, they are given the surname of "bou khorbich" (1).

1. Khorbich, room adjoining the mosque, where the water for ablutions is heated.

To this effacement of the council thus corresponds an increase of the power of the "senate." At the same time the attributions of

/226 cont./

*634 184 Again, let us cite the Aït Tounert, in the tribe of the Ida ou Mhamoud, /227/ who take their moqaddem in four families of the "taqbilt" to the exclusion of all the others. In the "taqbilt" of the Aït Gaïr, in the high valleys of the Gedmiwa, only the inhabitants of the village of Taounghast, in which there is a large fortress constructed a century ago by contribution from all the other villages, have the right to direct the politics of the valley and the moqaddem is always chosen in their city.

*634 •681 652 V. The distribution of the fines. -- No act of the life of the "taqbilt" of the Haut-Atlas /High Atlas/ enables one to judge the strength of their republican institutions better than the distribution of the fines. When the traditional rule of the three thirds -- one reserved for the moqaddem, the other for the inflas, the third for the common treasury of the "taqbilt," is still observed exactly, one has proof of a perfect preservation of the oligarchic institutions.

In the western Atlas it is the moqaddem who is charged with keeping the accounts of the treasury (1).

1. It is the same for the amghar in the Todgha (Sitte und Recht /Custom and Law/, p. 128).

The money collected permits lodging guests, compensating for the minor services rendered to the council, giving small benefits to the poor, and above all celebrating the "tinoubga," festivities of alliance, with éclat.

*634 652 [651] Sometimes, moreover, it is necessary, after exceptional expenses, to restore the reserve fund of the "taqbilt" treasury and proceed to a levy of extraordinary taxes or "frida." The "inflas," or a few eminent or respected personages, are then often exempted from furnishing contributions in money.

*634 652 178 In the Haut-Atlas /High Atlas/ the only region in which the institution of a taqbilt treasury has been preserved intact up to our day is that of the Ida Ou Mhamoud, protected, thanks to its remoteness, from the direct influence of the great chiefs. One still sees

/227 cont./ One still sees
*634 at present, figuring in the annual accounts that the moqaddem
652 has to render to his successor, the purchase of a she-mule of-
178 fered as "hedia" /hadiyah, "gift"/ to the powerful kaid of
[431] Bouaboud (2).

2. From F. de La Chapelle (ibid.).

*634 Often another custom, particularly widespread in the Sous and
•681 Anti-Atlas, is introduced, which permits avoiding the difficulties
574 of the distribution of the fines: that of the "imensi n tqbilt," the
[184] dinner offered by the guilty one to the inflas of the fraction.
The menu of /228/ this meal is fixed in advance according to
the importance of the crime or offense; it is always accompanied
by an offering of lumps of sugar.

The rapacity of the "inflas" -- well known and even proverbial, since it is said in the Sous plain that they would be capable of claiming up to the dogs' share of an inheritance -- is given free play at the "imensi n tqbilt." In this circumstance the
[578] beneficiaries of these common meals are sometimes seen to quarrel because one of them invites, without the authorization of the assembly, a passing guest. In fact, it seems impossible to acknowledge to them that this outsider thus diminishes everyone's part and takes away from the family heads the just payment to which they are entitled (1).

[671] 1. Certain customary regulations gravely discuss this problem of distribution, and people consent to close their eyes to the wrong done to the inflas by the invitation of a guest on condition that the latter take only one single mouthful from the dish, through simple politeness (Droit coutumier de l'Agadir de Tamaloukt /Customary law of the Agadir of Tamaloukt/, communicated by M. Ben Daoud).

/229 cont./

*634 619 692 VII. The justice circuits. -- When the cantons are thus grouped so as to constitute a veritable tribe, made up of a certain number of small autonomous units, they often proceed with circuits of justice carried out in the whole territory, in the course of which all the infractions committed during the year are investigated and punished. All the forces of the tribe then come to lend their support to each of the cantons, in order to facilitate the rapid settlement of differences without any danger to internal peace resulting from it.

*634 619 692 184 198 This custom, observed not long ago among the Igezzoulen of the western Anti-Atlas, is still very much alive in the confederation of the Ida Ou Tanan, among the Aït Ouᶜazzoun and the Ifesfasen. The circuit of justice is carried out by following a minutely observed ceremonial. Among the Aït Ouᶜazzoun, for example, a tribe made up of 15 "afous" or fractions, each "afous" first assembles ten Aït Arbaᶜin, who designate a representative. The 15 delegates of the "afous" thus named deliberate apart and form the /230/ council of the "imzran" (1), [625]

1. From the Berbère /Berber/ "zer," to see. The word, like that of Aït Arbaᶜin, has no singular. In order to designate one of the members, one says "ian gh imzran," one of the "imzran."

while the mass of the Aït Arbaᶜin of all the fractions together constitutes a police force capable of having all the decisions carried out. The whole takes the name of "ajmoᶜa" of the Aït Ouᶜazzoun. Thus formed, the "ajmoᶜa" goes first of all among the Aït Wanzig, who are the "inflas el khir" or "porte-bonheur" of the Aït Ouᶜazzoun tribe. For a day and a night the council investigates all the cases of theft or murder committed during the year and of which an account has been carefully kept by the notables and which the taleb has noted in writing. The guilty are summoned, heard, condemned to be fined, and they pay on the spot [695] [681]

*634 /230 cont./
619 pledges consisting of a certain number of guns. If the guilty
692 ones are marabouts, who do not have guns, they pay a fine in
184 the form of animals destined for the common meals. The next
178 day, the "ajmoᶜa" moves on, following a traditionally fixed
[695] itinerary, and stops for two or three days, according to the size
•[681] of the fractions. One night is spent at the zaouia of Sidi Brahim
[792] Ou ᶜAli, religious center of the confederation, where a solemn
[182] sacrifice is offered to the saint. Finally, the circuit of justice
ends in the cantons of the north, and on the last day, at the
zaouia of Issouqal, the guilty ones come to pay their fines and
take back the guns they had pledged. The marabouts who played
[431] the role of conciliators or advisors receive gifts, and a sacrifice
[782] is offered to the saint of Issouqal. Then the remaining money is
[652] immediately divided into two halves; one goes to the "imzran,"
the other to the fractions represented by the Aït Arbaᶜin.

One conceives what difficulties are presented for making order prevail in the small republics incapable of naming moqaddem, and which cannot, in order to put an end to the disputes of rival "ikhs," always threatening, unite with their neighbors to carry out circuits of justice with large forces. Left to themselves, they become sources of agitation and private wars, unless a leader succeeds in imposing his will on the turbulent assembly of the Aït Arbaᶜin. Among the Ida Ou Tanan such is the fate of the isolated fractions of the Aït Wanoukrim, Aït Oulma, Iberouten, in the tribe of the Ifesfasen, which possess neither moqaddem nor powerful "ajmoᶜa" capable of having /231/ the decisions of the notables applied. The inhabitants try to constitute, after a fashion, by their own means, an "ajmoᶜa" to which come all the men under arms; but for lack of a tradition as respected as that of the Aït Ouᶜazzoun, the "ajmoᶜa" often ends in fights.

*634 A similar example of impotence is given us in the heart of
184 the Masmouda country by the little "taqbilt" of the Aït Tigidar,
in the Asif el Mal, also endowed with a democratic constitution
without moqaddem, amidst neighboring fractions that are more
[578] pacific and better organized. Discords multiplied to such a point
[361] in this small territory that the village of Assals, political center

/246 cont./
609 and a change in external policy can have their expulsion as a
166 consequence (1).
*634
563

1. Cf. above, Book II, Ch. III, pp. 245-246.

[681] At other times, too, a group that fears being reduced by the
[619] exodus of families decrees penalties against those who try to pass into neighboring fractions. In this domain there is no general rule, and each "taqbilt," each "khoms" or tribe is inspired by its own interest.

474 /247/ II. The mutual aid and the contributions. -- Under
171 the name of "ouzia" one finds throughout the South of Morocco
681 the Kabyle custom of the "timecheret," purchase in common of
574 an animal whose flesh is to be distributed among all the inhabitants of the village; but the "ouzia" here most often preserves a religious character, and this practice does not become, as in the Djurjura, the occasion for obliging the inhabitants guilty of infractions of the laws of the city to offer a good meal to the whole village.

681 Here the benefit of the "imensi n tqbilt," solemn meal that
574 the criminal or delinquent gives to repair the moral wrong that he
* 634 has done to the community, is reserved solely to the Aït Arbaʿin, to the inflas of the senate of the canton. The "imensi ntqbilt," the "supper of the tribe," is, besides, a good windfall for the notables themselves, who are satisfied in everyday life with meager fare. The desire to have a good supper free of charge readily inclines the Aït Arbaʿin to give proof of great severity in the repression of offenses.

466 The corvées for plowing, harvesting, and transporting manure
476 are the occasion of manifestations of disinterested mutual aid to which the name of "touiza" is given. The "touiza" is granted to all who ask for it. One who cannot plow his field because of his
[571] poverty makes a "ʿar" to the jemaʿa in the form of a lump of
[154] sugar; on the next day the workers assemble and come to the aid of the unfortunate one or the widow without support.

/247 cont./

466 The "touiza" is obligatory with regard to the taleb, the
476 moqaddem, or the amghar; except in the case where a beneficiary is without resources, food is offered to the workers by the one who uses them. Inversely, one sees at present in the same
[651] regions subject to the authority of the Makhzen /makhzan/ the
[177] inhabitants of the village furnish to the kaids a number of days of "touiza" regulated by custom or fixed by the chief himself according to his needs. Each one brings his food and must often also contribute toward the maintenance of the kaid's slaves put in charge of the supervision of the work. This institution, which
[178] was originally a work of mutual aid, has become in this way a
[651] source of abuse, and its name is associated in the complaints of the montagnards with that of the "frida," an extraordinary contribution that a representative of the Sultan, kaid or caliphate, levies as often as he can in Berbère /Berber/ country.

*634 In the independent fractions, it is exceptional that the /248/
652 "taqbilt" treasury is reconstituted by means of extraordinary taxes
[651] or "frida" paid by each household. One-third of the fines paid
[681] by the guilty, reserved for this purpose, most often suffices, and the Berbères /Berbers/ feel profound repugnance toward paying contributions, with which the "Bled el Makhzen" is overburdened.
735 On the other hand, they acquit themselves willingly, either
794 through the medium of the common treasury or directly, of nu-
431 merous traditional tithes paid to the marabouts and the poor. In the Anti-Atlas, where all transactions and the measuring of har-
[465] vests are done at the "agadir," the part for the saints of the country and their descendants, the "igourramen," as well as the salary of the minor functionary charged with watching over the harvests or the collective storehouse, are taken on the spot by the official measurer. The Koranic regulation of taxes is in this way observed in spirit, if not in form, but for the exclusive benefit of the local saints and of the zaouias, which are, as has often been said, an integral part of Berbère /Berber/ society.

[171] Likewise among the tribes of the Jbala of the Habt one sees the shorfa /shurfa/ and the poor benefit from the sum total of the legal alms. The montagnards of the north of Morocco "acquit

/257 cont./

343 571 554 683 Moreover, it is important to defend the sentences of the "ᶜommal" against all foreign interference. The justice of the chraᶜ /sharᶜ, sharia: canonical law of Islam/ has nothing to do with their affairs, and one who says that the "louh" is only childish stuff and cannot serve for judging people lies and accuses the notables of errors; and that is as serious as accusing God himself of lying, because the notables are as sacred as the "louh," and every question not foreseen in the "louh" is consigned to their minds. The "louh" and the notables are as one. He who does not admit it will have to pay 50 dinars!

343 571 554 [574] [671] Under these conditions one understands that the leaders of the fortress naturally come to regard the "louh" and the fortress itself as their own property. It is necessary to offer them a meal in order to have the right to take cognizance of the collection of customary law, of which they are the sole holders. They claim that their competence extends to all circumstances of the common life, and there is scarcely anything but the repression of murder, doubtless reserved for the common ᶜorf of the fractions, [434] that escapes them. They keep the better part of all the fines that [681] they collect, and the agadir treasury receives a part only if it is a [652] matter of a quarrel or theft.

[556] [471] The "ᶜommal," by the spirit of their deliberations, thus constitute a small privileged senate, made up of rich men who exploit as they like the capital deposited in the agadir by the tribe. On the other hand, they guarantee the safety of the deposits and facilitate all /258/ the complicated transactions that a skillful legislation, whose secret they have, permits realizing.

[186] Such juridical monuments give the Berbères /Berbers/ pride in these spontaneous creations of the genius of their race. Just as people cite the best-constructed agadirs and take their arrangement as a model when it becomes necessary to build, by general corvée, a new fortress, so do they copy, while adapting them, the best-known "louh." Those of Tammellokt to the south of Tiout, of Tamalout of the Id Nouh in the Sirwa, of Ajarif or of Tasgent of the Ilalen are among the most famous.

/271 cont./

*634 578 613 soon abandons the title of moqaddem in order to take the one of amghar (1).

1. "Amghar," pl. "imgharen." Verbal noun originating from the root Mghr, to be great by stature, age, social position (de Foucauld, Dictionnaire touareg-fr. /Tuareg-French Dictionary/, II, p. 164).

The Arab word "chikh" /sheik/ translates very precisely the Berbère /Berber/ word "amghar." In certain regions of the western Atlas (Mzouda, for example) the notables are designated by the name of "Inmoghorn," derived from the same root.

*634 671 .681 We have mentioned the existence of the acts drawn up at the time of the nomination of the moqaddem, which for one year fix the scale for the settlement of some offenses whose repression is left to the free disposition of the president of the assembly. Written in very bad Arabic, these documents are nevertheless interesting to examine, because /272/ they clearly indicate to us the respective position of the president of the council of notables, of the inflas, and of the tribe, at the moment when the amghar makes his appearance.

[592] When tradition is respected and a moqaddem chosen according to the customary rules, we see figuring in the act, which is like the "lender's decree" of the minor Berbère /Berber/ magistrate, the names of all the family heads in the "taqbilt." To the number of 12 or 15, they were witnessing by their presence the general consent given by the canton to the new scale of fines.

[652] The customary rule is to divide the sums paid by the guilty ones into three equal parts by application of this convention: one third goes to the moqaddem, one third to the "taqbilt" in the person of its inflas, one third to the common treasury, which provides for the expenses of hospitality and for collective expenditures.

/272 cont./

*634 -681 178 Now it sometimes happens that on the scales of settlement thus established there are substituted for the names of all the notables of the fraction those of three or four important personages, who give their approbation in the name of all. At the same time, the primitive rule of distribution of the fines is perverted. One third is apportioned to the moqaddem, one third to these influential men, who give themselves the title of "ᶜayan" (1).

1. Arabic "ᶜayân," notables.

[652] one third to the "taqbilt," represented by effaced and starving inflas. With the same stroke the common treasury disappears.

*634 671 178 A decisive step is taken when we see the traditional name of "moqaddem" disappear in the acts to make way for that of a personage henceforth called "the respected amghar So-and-So." Near the name of the amghar are found only those of the notables, the "ᶜayan." An additional clause stipulates that the new master [681] of the canton will collect, in addition to a third of the fines, a [651] third of the ᶜachour, the Koranic tax that the Berbère /Berber/ [794] republics paid up to then wholly to religious personages or to the [735] poor. Often, even, a measure of barley per household was [465] granted for the benefit of the amghar. Personal power is henceforth established.

*634 661 578 613 726 These beginnings did not exist without requiring long and patient efforts of the new chief. Before taking authority, the amghar has arranged for himself the support of the heads of the most important "ikhs," and by /273/ clever intrigues he has succeeded in setting aside those who were hostile to him or making them disappear. But almost always this internal revolution does not take place without combat. Another notable, equally rich and courageous, opposes the ambitious amghar with all his forces, with his "ikhs"; war breaks out and is waged furiously until the defeated one is killed or banished with all his people; his village falls into ruins and the victorious chief retains power as long as he has the strength to do it and escapes the

175 /274 cont./
*634 him the brilliant career whose stages we shall soon learn (1).

1. Notes from F. de La Chapelle.

*634 III. The first financial resources of the chief. -- The al-
556 ways difficult situation of the new amghar is more rapidly amel-
661 iorated when to the redoubtable strength of a numerous clan he joins the irresistible power of money. Money is indeed, according to the words of the Berbère /Berber/ poet (2):

2. Justinard, Manuel de Berbère du Sous /Manual of Berber of the Sous/, p. 67.

"A diplomat who does not allow no in speaking."

By buying the co-operation of the enemies of his enemies, the amghar will succeed in conquering more easily than by the force of his arms.

*634 But the resources of the canton chief at his beginnings are
556 very limited. The landed wealth in these rugged valleys is
434 acquired only very slowly, to the mind of an ambitious man; it
661 cannot exceed, moreover, the possession of a few fields and a thousand sheep and always remains insufficient to serve great
• [681] schemes. The proceeds from the fines, it is true, do not stop increasing, because the scales of settlement rise at the same time as the amghar's authority is asserted; the chief confiscates for his own advantage the criminals' property and reduces more and more the part left for the notables of the council. One can even say that there is no surer way to judge the authority taken by the amghar than to know in what manner the primitive rules of distribution of the fines into three equal parts have been modified to his advantage.

[431] One can further add to these meager benefits the gifts re-
[681] ceived at the time of the arbitration of conflicts, the fines collected in the little mountain souqs /sooks/ in administering justice there, and finally the contributions that all the families of the "taqbilt" consent to pay annually. But all that cannot

175 /324 cont./
791 great mouggar /fair/ of the Tazerwalt celebrated twice a year is,
792 moreover, the scene of holy contests, in the course of which
554 warriors sometimes die, whom Sidi Ahmed ou Mousa carries away
[224] into paradise.
[541]

Thanks to the enormous prestige of their family, these mara-
[681] bouts were thus able to exercise a veritable sovereign power, and the most energetic of them, effortlessly concentrating religious and temporal authority at the same time, had "heads and hands cut off" as they liked (2).

[113] 2. Relation of Sidi Brahim de Massat /Account of Sidi Brahim of Massat/, R. Basset trans., p. 14.

[571] Natural arbitrators of the soffs, they thus held a royalty removed from the very manifest fragility of the Berbère /Berber/ tyrannies.

178 Nevertheless, in our day the decline of these descendants of
792 the Berbère /Berber/ kings of the seventeenth century is definitive.
554 It is they themselves, in rallying to the Makhzen /makhzan/, who
648 deserved to be attacked by popular indifference. Like many in-
* [634] dependent amghars of the Atlas, they lost all influence after one of them, Sidi Hosein, made himself the advisor of the sultan Moulay el Hasan in the Sous. In our day the successors of the autochthonous kings of the Sous humbly solicit from the Makhzen /makhzan/ the confirmation of their personal privileges /325/ and with difficulty manage to preserve at the tomb of their ancestor the cult that in former times was the glory of the Tazerwalt.

*634 If the tribes' confidence in the amghars endowed with the
178 most venerated "baraka" of the South of Morocco is easily lost,
648 one understands how it can abandon still more rapidly the temporal leaders, masters of small states conquered by violence. Having reached the degree of development that we have just studied, the amghar in fact strays more and more from the traditional milieu out of which he came; he feels attracted to the Makhzen /makhzan/, which gladly seeks to utilize his power for its ends, much more than he is tempted to remain, in the eyes of the people, the defender of the mountains' independence.

*634 /345 cont./
*631 makhzen /makhzan/ leader only new burdens. In order to equip
652 his mokhaznis, supply them with arms, buy the complicity of
[648] the minor chiefs of the vicinity, and struggle at the court of the
[701] Makhzen against the dangerous influences of the nearby great chiefs by distributing considerable sums to the great ones, new resources are always needed. It is then necessary to impose on
[651] the tribes extraordinary contributions, "frida," to buy the lands
[728] from the ruined inhabitants or, better, to confiscate them, when villages have been destroyed and the families exiled. Hundreds
[567] of slaves are bought to cultivate these abandoned fields. The retinue of the house does not cease to grow. In proportion as the importance of the domains and of the command increases, the intermediaries also become more and more numerous, the harvests and the taxes melt away in their hands, and the chief receives no more than a small part of them.

[619] With an ever-increasing ambition, the kaid then tries to get,
[661] by force or by intrigue, to establish himself in the richest tribes in the vicinity, while the ruin of the ones that he already commands is consummated.

[466] Corvées, taxes, and fines are multiplied indeed, and, in
[651] order to find the money required by the mokhaznis, the peasants
[681] come to the casbah to sell their unripe harvests, their almonds in bloom, and to pawn their fields. Against the urgent necessity of
[571] finding resources, no consideration can hold if it is not that of
[557] keeping intact the very organization of the command by treating with respect the few families whose fate is bound up with that of the kaid. So the great concern of the chief is to acquire goods by every means. If this regime could continue /346/ to endure, the kaid, with his brothers, would come to possess all the lands of the country.

*634 Doubtless in the beginning preferential treatment is still re-
*631 served in the Asif Nefis for the "Aït Iraten," among whom the
616 Gontafi found so many allies; but later, when the memory of the
652 institution of the leffs is almost lost, after 40 years of internal
178 peace, the friendly cantons of the past will end up by being sub-
557 ject to the common regime of the "frida" and corvées. Only the

/389 cont./

177 648 671 and offenses and to regulating the political life of the canton. At the same time the part of the "chra^{c}" /shar^{c}/ grows unceasingly; it embraces the status of persons and soon extends to property litigation.

177 648 671 It is most often at this moment that the political penetration of the Makhzen /makhzan/ is achieved. The "louh" of the tribes, the venerable collection of their customs, entrusted up to now to the care of the moqaddem or Aït Arba^{c}in, falls into the hands of * 631 the amghar, of the sheik of the canton, /390/ or of the kaid of *634 the tribe. Henceforth it is a man whose power has no limits other than his strength who is in charge of ordering and forbidding. Of what importance to him are the ancient rules established by assemblies, the very memory of which is an offense to his power? • [681] Besides, is it not better, in punishing the guilty, to set fines that take their resources into account? A well-to-do man will pay a large sum to get out of prison; a poor man will at the very least [693] be able to sell his field. As for the surplus, the cadi, faithful to the new master, will under all circumstances know how to judge according to the interests of the Makhzen /makhzan/.

Thus the Berbère /Berber/ institutions succumb one after another. Two forces unite against them, that of the chiefs and that of the sherifian Makhzen. One originated in the mountains themselves: amghars, chiefs of a canton, of a leff, or of a tribe, semi-independent kaids whose casbahs rise near the summits, assert their will, always more powerful and more absolute, to enslave the small republics for their personal ends and to transform the formerly free men into docile and resigned subjects. The other power comes from heaven, since it is from God that the sovereign derives his throne and his principles of government, when the Mussulmans recognized him as supreme leader; but, in reality, this theocracy is only the association of material interests and devouring ambitions by which the activity of the functionaries of the Makhzen /makhzan/ is explained. Neither de facto nor de jure can the Berbère /Berber/ institutions find any place in this government. The first principle of this absolute monarchy is that of the most complete submission of the inferior to the superior.

4: Hoffman E-4 (no date) 1967 MW11 Shluh MW11 (ca. 1900)

as the *'adat* or *'urf*, the distinction between these two words being somewhat confused. Customary law is consulted in all civil cases (such as disputes regarding terrain, water rights, inheritance, etc.), and in minor criminal matters – the customary law having been replaced by a French-sponsored penal code in most aspects of criminal law since the establishment of the Protectorate. This customary law is established and revised by the local representative councils of each region; it may be administered either by them or by a designated arbiter (*annezzarfou*), this arbiter being required to have a great knowledge of the local law, and to be an intelligent and experienced man highly regarded by all. If possible, he should be a stranger to the group involved, or else divorced from its mundane affairs by virtue of being a holy man (Johns Hopkins University, 1956, pp. 231-232; Loubignac, 1942, p. 281).

The most important aspects of the *azrif* are water rights and (formerly) penal crimes such as theft, abduction of women, adultery, wounds, blows, and murder. Water rights are still carefully regulated by the *'urf* or customary law of each group. Among the Beni Uriaguel (99), for example, the *qanuns* or edicts of customary law dealing with irrigation carefully take into account the nature of flow in different rivers. Thus, on the Lower Rhis, in the Plain of Alhucemas, where the flow is constant but not altogether sufficient, the *qanuns* state that any man who purchases land must buy his irrigation turn independently. In the case of the Nekor River which is extremely erratic, the *qanuns* provide that the purchaser of land is automatically entitled to irrigation water, because most of the year there is sufficient quantity for all. Throughout the Berber areas litigation regarding water rights is kept at a minimum through the existence of water administrators (known as *amazzal*, pl. *imazzalen*, among the Shluh) who distribute the irrigation water in accordance with the recognized rights (Hart, 1954, pp. 56-57).

In its application to criminal acts the Berber *azrif* was characterized by great dependence upon oaths and upon the imposition of fines. This first feature (oaths) was the principal reason for the Berber court usually meeting in a mosque or at a market with an associated shrine, for in all cases the litigants swear by something to give efficacy to their oaths, and this is generally something which has

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Shooting at a man but missing him,
Collection of blood money,
Failure to attend weddings outside the commune,
Speaking to women in market.

Tribal Council

Adultery caught in the act,
Wounding,
Murder.

681 The nature of the crime also determines the fine imposed. All [685] *'urfs* on record are for the most part long lists of fines for infractions [623] of various rules. If the crime is theft, the fine also varies according [634] to the value of the object stolen. These fines are generally paid to [635] the *jemaa* having jurisdiction over the case. Thus, in Nesrat the [171] fine paid by the respondant of a division of the *ksar* to the *amghar n l'amt* accrues to the members of the superior council (Johns Hopkins University, 1956, p. 232; La Chapelle, 1929, pp. 32-33).

682 This system of jurisprudence, while functioning satisfactorily in most cases, often broke down when the crime was homicide, either because the initial act caused such immediate reprisal and developed into a war so quickly that the councillors found themselves fighting on one side or another before they could call a meeting, or because the tribal council lacked the power to enforce its decision. This 692 situation was forestalled somewhat among some of the Shluh tribes through the institution of annual "rounds of justice".

... Lorsque les cantons [districts] sont ainsi groupés de manière à constituer une véritable tribu, formée d'un certain nombre de petites unités autonomes, on procède souvent à des tournées de justice exécutées dans tout le territoire, au cours desquelles toutes les infractions commises pendant l'année sont examinées et punies. Toutes les forces de la tribu viennent alors prêter leur appui à chacun des cantons pour faciliter le règlement rapide des différends sans qu'il en résulte aucun danger pour la paix intérieure.

Cette coutume, naguère observée chez les Igezzoulen de l'Anti-Atlas occidental, est encore très vivante dans la confédération des Ida Ou Tanan, chez les Ait Ou'azzoun [545] et les Ifesfasen [544]. La tournée de justice est accomplie en suivant un cérémonial minutieusement observé. Chez les Aït Ou'azzoun, par exemple, tribu formée de quinze "afous" ou